HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Revision No. 220 of 2001
(Old No. 1659 of 1998)

Dhirajmani Thapliyal
S/o Sri Satyasharan Thapliyal
R/o Village Guneti Patti Udaiket
District Tehri Garhwal at present
R/o village Chaprialyal Gaon
Patti Bamund
District & Tehsil Garhwal …Applicant/
Revisionist

Versus

State of U.P. …. Opposite Party

Sri Lokendra Dobhal learned counsel for the revisionist
Learned A.G.A. appears on behalf of opposite party.

Hon'ble B.C. Kandpal, J.

This criminal revision arises out of order and judgment dated 04.09.1998 passed by Sessions Judge Tehri Garhwal in Criminal Appeal No. 2 of 1997 Dhirajmani Thapliyal Vs. State of U.P.

Brief facts giving rise to this revision are that on 19.09.1995 Station House Officer, Police Station Chamba District Tehri Garhwal was on patrol duty and while he was checking the vehicles plying on the road, a Mahindra Commander Jeep No. UP09 0146 coming from the side of Mussoorie direction was stopped by the patrolling party and the police found country made liquor pouches kept in three bags in the vehicle. The police accordingly took the driver and other companions in the custody and the case was registered at Police Station Chamba under Section 60/72(2) U.P. Excise Act. The police also seized the vehicle and kept the same at Police Station Chamba. The chalani report was submitted by the

Station House Officer, Chamba on 19.09.1995 before the District Magistrate, Tehri Garhwal. The District Magistrate directed the prosecuting officer, Tehri Garhwal vide order dated 21.09.1995 to examine the said report. After submission of the report by the prosecuting officer, the District Magistrate, Tehri Garhwal directed the case to be registered against the revisionist and notice to show cause under Section 72(2) and (5) of U.P. Excise Act was issued against the revisionist.

In compliance of the aforesaid notice, the revisionist submitted his objection before the court below. The learned trial court i.e. the District Magistrate, Tehri Garhwal vide its judgment and order dated 15.07.1997 confiscate the vehicle in question in favour of the State Government.

Felling aggrieved by the aforesaid judgment and order dated 15.07.1997 passed by the District Collector/District Magistrate, Tehri Garhwal in criminal case No. 6 of 1995, the owner of the vehicle Dhirajmani Thapliyal preferred an appeal before the court of learned Sessions Judge, Tehri Garhwal under Section 72(7) of U.P. Excise Act.

The learned Sessions Judge, Tehri Garhwal vide its judgment and order dated 04.09.1998 also dismissed the appeal after hearing the arguments of both sides.

Feeling aggrieved by the aforesaid judgment and order passed by the Sessions Judge, Tehri Garhwal, a revision was preferred by Dhirajmani Thapliyal before the High Court of Judicature at Allahabad, which has been transferred to this Court after creation of Uttaranchal, for disposal

Heard learned counsel for the parties and perused the record.

The learned counsel for the revisionist in this revision has firstly argued that the provision of Section 53 has not been followed by the police party at the time of search of the vehicle in question.

In order to evaluate this aspect of the matter, it would be important for me to reproduce the provision of Section 53 of the U.P. Excise Act which runs as follows:-

> ***"53. Power of Collector or officer of the Excise Department to search without warrant-***
>
> *1- Whenever a Collector or an officer of the Excise Department not below such rank as the State Government may prescribe or a police officer not below the rank of [Sub Inspector] has reason to believe that an offence publishable under Section 60, Section 61, Section 62, Section 63, or Section 65 has been, is being or is likely to be committed in any place, and that is search warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, he may, at any time by day or night, enter and search such place:*
>
> *Provided that any officer other than a Collector taking action under this sub-section shall before entering such place record the grounds of his belief as aforesaid.*
>
> ***Further powers of seizures, detention, search and arrest***
>
> *2. The Collector or other officer as aforesaid may seize anything found in such place which he has reason to believe to be liable to confiscation under this Act, and may detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid."*

Now, in view of the aforesaid provision, the learned counsel for the revisionist has submitted that the police officer at the time of search, could search the vehicle without obtaining search warrant, but under those circumstances, the police officer taking action under the aforesaid Section shall before entering such place record the grounds of his believe as aforesaid.

Learned counsel for the revisionist has also stated before me **1987 Allahabad Criminal Ruling page 557** in support of his contention.

I perused the judgment cited by the learned counsel for the revisionist before me and I am of the view that the judgment cited before me does not apply to the facts and circumstances of the present case. The interpretation of Section 53 is that the police officer who has reason to believe that the offence punishable under Section 60, Section 61, Section 62, Section 63 or Section 65 has been, in being, or is likely to be committed in any place then he can search that place without obtaining any search warrant. But before entering such place he shall have to record the grounds of his believe as aforesaid.

Therefore, on having perused the provision of Section 53 it would be quite clear that the police officer who is going to search the place should have reason to believe that the offence punishable under Section 60, Section 61, Section 62, action 63 or Section 65 has been, is being, or is likely to be committed then he will have to record the grounds of his believe. But in the instant case the police officer was on patrol duty and was involved in checking of the vehicles plying on the road and all of a sudden found that the illegal liquor was being carried in vehicle in question who belong to the revisionist. Therefore, it

cannot be said that the police officer had any reason to believe at the time of the occurrence that an offence under the aforesaid provisions of the Excise Act is being or is likely to be committed at that place. The argument advanced by the learned counsel for the revisionist also does not carry any force as the word “place” has been mentioned in Section 53 and in view of the definition given under the U.P. Excise Act under Section 3(22) the word “place” has been defined and the definition of “place” does not include vehicle, a car and conveyance.

Learned counsel for the revisionist has further argued that the Sessions Judge did not have power to entertained the appeal under Section 72(7) of U.P. Excise Act as a criminal appeal. He has submitted that the Sessions Judge was exercising the powers of Appellate Judicial Authority. Hence the Sessions Judge should have heard the appeal as a civil appeal and not as a criminal appeal. Learned counsel for the revisionist has stated **1991 Allahabad High Court Cases 487** in support of his contention.

I have perused the judgment cited by the learned counsel for the revisionist in support of his contention. I do not find myself in agreement with the view adopted in that judgment. In the instant case the offence was committed in the year 1995 and the appeal was also decided in the year 1998. Thereafter it would not be reasonable to send back the appeal itself before the court of Sessions Judge for deciding the same as a civil appeal.

Learned Sessions Judge has decided the appeal on merits and after discussing the entire evidence available on the record in detail, the learned court below came to the conclusion that no

illegality or irregularities in passing the order of confiscation by the District Magistrate has been committed.

Perusal of the judgment passed by the appellate court also reveals that no illegality, impropriety or error of jurisdiction has been committed by the appellate court. I, therefore, do not find any ground for interference in the judgment and order passed by the court below by way of the present revision.

For the discussion made above, I am of the considered view that the present revision being devoid of merit, it liable to be dismissed.

Accordingly, the revision is dismissed and the judgment and order passed by the court below are confirmed.

(B.C. Kandpal, J.)

July 29th, 2004
ASWAL